INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	3
Argument	5
Conclusion	8
Appendix	9

CITATIONS

Cases:	
Cortland Specialty Co. v. *Commissioner*, 60 F. (2d) 937, certiorari denied, 288 U. S. 599	6
General Utilities Co. v. *Helvering*, 296 U. S. 200	7
Helvering v. *Buchsbaum*, 308 U. S. 527	6
Helvering v. *Rankin*, 295 U. S. 123	7
Helvering v. *Tyng*, 308 U. S. 527	6
Hormel v. *Helvering*, No. 257, this Term, decided March 17, 1941	7
LeTulle v. *Scofield*, 308 U. S. 415	6
Pinellas Ice Co. v. *Commissioner*, 287 U. S. 462	6
Statutes:	
Revenue Act of 1928, c. 852, 45 Stat. 791:	
Sec. 112	5
Revenue Act of 1932, c. 209, 47 Stat. 169:	
Sec. 111	9
Sec. 112	5, 9

303209 - 41



In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 828

KARL B. SEGALL, TRANSFEREE, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

No. 829

WALTER F. TANT, TRANSFEREE, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 20–30) is reported in 38 B. T. A. 43. The opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 180–187) is reported in 114 F. (2d) 706.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered September 16, 1940 (R. 179, 180). A petition for rehearing was filed November 14, 1940, and denied December 11, 1940 (R. 189–197). The petition for writs of certiorari was filed March 10, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the transaction whereby the Timken-Detroit Company acquired all of the assets of the Silent Automatic Corporation in exchange for cash and its one- to four-year unsecured debenture notes constituted a tax-free reorganization, to the extent of the gain represented by the notes, under the provisions of Section 112 of the Revenue Act of 1928 or 1932.

2. Whether, under the circumstances of this case, it was error for the Circuit Court of Appeals to decide an issue of law which was tried before the Board of Tax Appeals but which the Board did not decide since it disposed of the case on another ground.

STATUTE INVOLVED

The pertinent portions of the Revenue Act of 1932 are printed in the Appendix.

STATEMENT

This case involves the income-tax liability of the Silent Automatic Corporation for the year 1932, growing out of the transfer of its assets. A deficiency was assessed against each of the petitioners as transferees of the assets of that corporation (R. 20); petitioners concede that they are liable as transferees if the Silent Automatic Corporation is liable for the tax (R. 41). The two cases were heard and decided together by the Board of Tax Appeals and the court below (R. 20, 180).

The facts were, in the main, stipulated before the Board and may be summarized as follows:

On October 2, 1931, the Timken-Detroit Company, a Michigan corporation, entered into an agreement with the Silent Automatic Corporation, another Michigan corporation, and with petitioners Segall and Tant, officers and principal stockholders of the Silent Automatic, whereby Silent Automatic agreed to transfer and Timken agreed to acquire all the assets of Silent Automatic (R. 20–22). The date fixed for the transfer was January 2, 1932. Timken agreed to assume, with exceptions here immaterial, Silent Automatic's obligations, as of the date fixed for transfer, and to pay $2,100,000 as follows: $760,000 in cash to Tant, as trustee for Silent Automatic, upon execution of the agreement; a promissory note for $100,000

dated October 2, 1931, and maturing January 2, 1933, payable to Surprenant & Company, for their services as brokers; 5 percent gold debentures in the amount of $1,240,000, bearing interest from October 2, 1931, payable in five annual installments beginning January 2, 1933, and guaranteed by the Timken-Detroit Axle Company, an Ohio corporation (R. 22–26). Silent Automatic agreed that pending the transfer it would conduct its business in the usual manner and that it would not declare any dividends prior to delivery to Timken. Petitioners and Silent Automatic also undertook to refrain from manufacture or sale of oil burners for a period of five years beginning January 1, 1932 (R. 23, 60).

Formal approval of the transfer of the assets of Silent Automatic to Timken was given on January 2, 1932, by the requisite two-thirds of the shareholders of Silent Automatic (Ex. L, R. 83).

The Commissioner of Internal Revenue asserted deficiencies for the year 1932 on the theory that the transfer constituted a sale of the assets of Silent Automatic Corporation, occurring in 1932 (R. 7–10). Petitioners appealed to the Board.

In its opinion the Board stated (R. 27–28):

> Two issues are presented and argued by the parties: (1) Did the transactions pursuant to the agreement of October 2, 1931, between the Timken-Detroit Co. and Silent

Automatic Corporation accomplish a tax-free reorganization as provided in section 112 (b) (4) and (d) (1) of the Revenue Act of 1928 or 1932, and (2) was the transaction completed and the profit, if any, taxable in 1931 or 1932?

The Board held that the transfer did accomplish a tax-free reorganization, and therefore did not decide the second issue (R. 30). Its findings of fact covered, however, the second as well as the first issue (R. 20–27).

The Commissioner appealed to the court below, on the ground that the transfer was not a tax-free reorganization. Petitioners contended, both on brief and argument, that even if the transaction was taxable it was completed in 1931, so that the Commissioner had erred in asserting the deficiencies for 1932 rather than for 1931 (R. 184). The Circuit Court of Appeals reversed the Board upon the reorganization issue and also held that the Commissioner properly determined that the transaction had occurred, for tax purposes, in 1932 (R. 180–187).

ARGUMENT

1. The court below held that the transfer of assets by one corporation to the other for cash and one- to four-year unsecured debenture notes of the acquiring corporation did not constitute a tax-free reorganization within the meaning of Section 112

(b) (4), (d) (1), and (i) (1), Revenue Act of 1928 or 1932.[1] Its decision is squarely in accord with the recent decisions of this Court in *LeTulle* v. *Scofield,* 308 U. S. 415, 420–421; *Helvering* v. *Tyng,* 308 U. S. 527, and *Helvering* v. *Buchsbaum,* 308 U. S. 527. To the same effect are *Pinellas Ice Co.* v. *Commissioner,* 287 U. S. 462, and *Cortland Specialty Co.* v. *Commissioner,* 60 F. (2d) 937 (C. C. A. 2d), certiorari denied, 288 U. S. 599. In the *LeTulle* case this Court held that the acquisition of substantially all of the assets of the Irrigation Company by the Water Company in exchange for cash and secured bonds of the Water Company, payable over a term of one to eleven years, did not constitute a reorganization within Section 112, Revenue Act of 1928, since ownership of the secured bonds did not retain for the transferor a "proprietary interest in the enterprise"; the Court further held that the term of the obligations was not material. In the *Tyng* and *Buchsbaum* cases, decided *per curiam* upon the authority of the *LeTulle* decision, the transferor stockholders received cash, unsecured gold debentures, gold debenture bonds and investment certificates convertible into common stock of the transferee. The debentures ran for a term of 20 to 40 years. From these decisions it follows *a fortiori* that cash and one- to four-year debentures (whether secured or unse-

[1] The pertinent provisions of the Revenue Acts of 1928 and 1932 are substantially identical.

cured) do not furnish the continuing proprietary interest in the assets and affairs of the transferee necessary in order to effect a statutory reorganization.

2. Petitioners also contend that the Circuit Court of Appeals had no "jurisdiction" to resolve against them the question whether the profit was taxable in 1932, instead of remanding that issue to the Board. The issue in question was tried to the Board, and the Board made findings of fact upon it, but did not decide the question of law in view of its decision that the transaction constituted a tax free reorganization. Since the relevant facts were thus before the court below no useful purpose would have been served by a remand to the Board, and the court acted well within its discretion in disposing of the issue itself. *Helvering* v. *Rankin,* 295 U. S. 123; *General Utilities Co.* v. *Helvering,* 296 U. S. 200, and other cases relied upon by petitioners (Pet. 6) involved situations where the trial tribunal had not made the necessary findings of fact or where new questions or new theories were proposed for the first time in the appellate courts. Compare *Hormel* v. *Helvering,* No. 257, this Term, decided March 17, 1941.

Moreover, petitioners briefed and argued the issue in the court below, and conceded that it might properly be disposed of there if the court resolved it in their favor. See R. 184.

CONCLUSION

The decision below presents no conflict or question of general importance and the petition should therefore be denied.

Respectfully submitted.

NEWMAN A. TOWNSEND,
Acting Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
THOMAS E. HARRIS,
MAURICE J. MAHONEY,
Special Assistants to the Attorney General.

MARCH 1941.

